
**TESTIMONY BEFORE THE:
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
OF THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES**

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**STATEMENT BY:
MICHAEL J. DONAHUE, PH.D.
PRESIDENT/CHIEF EXECUTIVE OFFICER
GREAT LAKES COMMISSION**

On behalf of the eight member states of the Great Lakes Commission, I am pleased to present our testimony on priorities for the Water Resources Development Act of 2002.

OVERVIEW OF THE GREAT LAKES COMMISSION

The Great Lakes Commission is a binational agency that promotes the orderly, integrated and comprehensive development, use and conservation of the water and related natural resources of the Great Lakes basin and St. Lawrence River. The Commission was established by joint legislative action of the Great Lakes states in 1955, via the Great Lakes Basin Compact, and granted congressional consent in 1968 through Public Law 90-419. Commission members include the eight Great Lakes states with associate member status for the Canadian provinces of Ontario and Québec. Each jurisdiction appoints a delegation of three to five members comprised of senior agency officials, legislators and/or appointees of the governor or premier. All Commission activities are directed at realizing our vision of a healthy environment, a prosperous economy, and a high quality of life for all citizens. Three principal activities support this vision:

- < Information sharing among the membership and the entire Great Lakes-St. Lawrence community
- < Policy research, development and coordination on issues of regional interest
- < Advocacy of those positions on which members agree.

The Great Lakes Commission has a legislative mandate to represent the collective views of the eight Great Lakes states before the Congress and the federal government.

GREAT LAKES WATER RESOURCES AND THE WATER RESOURCES DEVELOPMENT ACT

The water resources of the Great Lakes basin have provided a basis for human settlement and economic development, recreation, and inspiration for hundreds of years. The industries that characterize the Great Lakes region – from manufacturing to tourism, from shipping to recreational boating – rely on Great Lakes water for their prosperity. Also, more than 33 million residents depend on Great Lakes basin water as their primary source of drinking water. The Great Lakes Commission works with each of its member jurisdictions to identify and pursue priorities to balance the many, and sometimes competing, demands on the water resources of the Great Lakes basin. The Water Resources Development Act has historically been a critical vehicle for the development, maintenance and protection of Great Lakes water resources. The

Water Resources Development Act (WRDA) of 2002 is no exception. Below we outline three priorities of the Great Lakes Commission for inclusion in WRDA 2002.

1) AMEND SECTION 204 OF WRDA '92 TO INCLUDE A VARIETY OF BENEFICIAL USES

We urge Congresses to **support an amendment to Section 204 of WRDA 1992 to expand authority for beneficial use projects to include “repair and improvement of public infrastructure, public lands and other uses with public benefit.”** Presently, Section 204 of WRDA 1992 authorizes the U.S. Army Corps of Engineers (Corps) to conduct beneficial use projects for aquatic habitat restoration purposes only.

Approximately 4 million cubic yards of sediment are dredged each year from ports, harbors, and waterways throughout the Great Lakes to maintain commercial and recreational navigation. Traditional management methods place most dredged material into confined disposal facilities (CDFs) or the open waters of the Great Lakes. However, Great Lakes CDF capacity is diminishing; CDFs are expensive to build and difficult to site. Beneficial use can divert clean or mildly contaminated dredged material to productive uses, reserving CDF capacity for the most contaminated material, thus extending the life of CDFs. Also, there is decreasing acceptance of open water disposal and an emerging belief that, where possible, reuse and recycling of dredged material should be expanded. With proper testing and government guidelines that protect human health and the environment, beneficial use of dredged material offers a sustainable long-term management option for an important portion of Great Lakes dredged material.

Dredged material can be used beneficially in a wide variety of applications, including not only aquatic habitat restoration but also for upland habitat restoration/creation, topsoil creation/enhancement, landscaping, land reclamation (e.g., minelands, brownfields), capping, shore protection, beach nourishment, replacement fill and as a source of aggregate in the manufacture of construction materials. These are productive applications with real potential to divert dredged material from open lake disposal. A survey by the Great Lakes Commission's Task Force on Beneficial Use of Dredged Material (Task Force) identified examples of all of these types of beneficial uses in the Great Lakes region. However, in most cases they were conducted under special exemptions from normal regulatory/permitting processes or as pilot projects. These projects are featured in the Great Lakes Commission booklet *Waste to Resource: Beneficial Use of Great Lakes Dredged Material* (www.glc.org/dredging/benuse/BenUseReport.pdf).

The Task Force also identified many legal, technical and economic barriers to beneficial use of dredged material. One significant legal barrier was the lack of express Congressional authority for the Corps to conduct beneficial uses other than for aquatic habitat purposes. Expansion of Section 204 to include all types of beneficial uses was an explicit Task Force recommendation as reflected in the Final Task Force Report released in October, 2001 (www.glc.org/benuse/Finalreport.pdf). The Great Lakes Commission passed a resolution last October at its 2001 Annual Meeting in Milwaukee, Wisconsin endorsing this recommendation.

Commission staff subsequently engaged in discussions with congressional staff on this matter. We are aware that on September 5, 2001, Senators Levin and DeWine requested the Corps' assistance in drafting language to expand beneficial use applications under Section 204. We have seen the Corps' proposed language in response to this request and have made our support for this language known to staff of the Senate Great Lakes Task Force via email correspondence dated February 4, 2002. That correspondence included the following statement:

The Commission has reviewed the proposed WRDA Section 204 expansion language as provided with drafting assistance from the Corps and we believe that the proposed language satisfies the interests of the Great Lakes states to expand authority for the Corps to undertake beneficial use projects.

We also believe that the Corps' Chicago [Great Lakes and Ohio River Division] office's changes to the proposed language, with respect to paragraphs (e) and (g), further strengthen the proposed amendment. With respect to paragraph (e), we do not see that the language "to be derived from . . . erosion." adds anything and agree that it should be deleted. Regarding para. (g) we also recognize that not all beneficial use projects take place on lands under local jurisdiction. We suggest either deleting "with the consent of the affected local government" or replacing it with "with the consent of the affected jurisdiction" or similar language that would recognize that such projects do not always take place on lands under local government control.

In addition, we urge Congress to consider allowing other federal funds passed through to states and localities to be used as possible sources of required matching funds for beneficial use projects conducted under Section 204. Section 204 currently requires a 25 percent cost-share for that portion of beneficial use project costs that is beyond the cost of traditional disposal methods (i.e., what is determined to meet the Corps' "federal standard"). Many states and localities cannot afford to pay this cost-share requirement and Section 204 does not allow for the cost-share to be paid as an "in-kind" contribution. Since many beneficial use projects have the potential to be part of other activities that receive federal funding (e.g., brownfields redevelopment, mining reclamation, coastal management), it makes sense that these other federal funds should be eligible to serve as the cost-share for beneficial use projects. Indeed, Lieutenant General Robert B. Flowers, Chief of Engineers and Commander of the U.S. Army Corps of Engineers recognized the persistent difficulty of states and localities in coming up with the required federal match for water resource development projects. In speaking before the National Association of Local Government Environmental Professionals in June 2001, General Flowers supported the notion that "in some cases, funding from other federal programs can be used as the local contribution for a Corps water resources development project." He further explained that this was "an alternative for communities to leverage federal contributions they receive from diverse sources."

Expansion of Section 204 so that beneficial use projects also include repair and improvement of public infrastructure, public lands and other uses with public benefit will give the Corps the express authority to pursue beneficial use projects without having to go through special permits or procedures. It will also allow more Great Lakes dredged material to be reused and recycled instead of placed in CDFs or dumped in the open lake.

2) NEW CORPS AUTHORITY FOR RESTORATION AND REMEDIATION OF WATERFRONT AND RELATED AREAS

The Great Lakes Commission seeks Congressional support for a new authority for the Corps to engage in restoration and remediation of waterfront and related areas. This new authority is proposed as a specific provision in a WRDA 2002 bill.

In the Great Lakes basin, many cities are located on or near the Great Lakes waterfront. Numerous waterfront areas are plagued with abandoned or underutilized and sometimes contaminated properties often known as "brownfields." Redeveloping these properties has become a priority issue in the Great Lakes region and nationally. The unique amenities associated with waterfront properties make these areas well-suited for all types of redevelopment—residential, commercial, industrial and recreational. However, revitalization typically requires more funding and expertise than new development in previously undeveloped areas. This is particularly true for waterfront

properties because there is both a land and water component. Without concerted and coordinated efforts to revitalize older urban areas including waterfronts, new development migrates to outlying areas, usually in the form of sprawl.

A new Corps authority is needed because existing authorities limit the Corps' ability to fully apply its expertise in environmental cleanup to the restoration and remediation of waterfront and related areas. As a result, projects are pursued only where there is a clear connection to existing authorities that were developed for other purposes. Consider the following.

- < Sec. 22, Rivers and Harbors Act of 1970 - Provides for planning-only assistance.
- < Sec. 1135, WRDA 86 - Provides for restoration only for sites with a tie to a Corps project.
- < Sec. 312, WRDA 90 - Provides for remediation only of contaminated sediments outside the boundaries of navigation channels as part of navigation operation and maintenance.
- < Sec. 401, WRDA 90 - Provides for assistance only as part of Great Lakes Remedial Action Plans.
- < Sec. 204, WRDA 92 - Provides for restoration of aquatic habitat only, and only with navigation dredged material.
- < Sec. 206, WRDA 99 - Provides for restoration and protection only for aquatic habitats.

The federal role in brownfields cleanup and reuse to date (e.g., by U.S. EPA and HUD) has primarily been in the form of liability reforms and grants to administer state programs. The Corps has hazardous waste cleanup, engineering and water resource management expertise that can complement other federal activities and fill unmet needs for cleanup and redevelopment from both the land side and the water side of waterfront properties.

The Corps has built on its engineering expertise by expanding its capabilities in the area of environmental restoration. Corps environmental restoration expertise has not been limited to enhancement of aquatic resources, but also includes the cleanup of hazardous and toxic waste. For example, the Corps is currently working with the U.S. Environmental Protection Agency on 143 Superfund projects nationwide. In 1997 Congress recognized the Corps' environmental restoration capabilities when it transferred the Formerly Utilized Sites Remedial Action Program (FUSRAP) from the Department of Energy to the Corps. The FUSRAP rounded out the Corps' hazardous and toxic waste cleanup to include radiological waste.

While some existing authorities do allow the Corps to engage in waterfront remediation and redevelopment activities, the specific or restrictive nature of these authorities limits the Corps' ability to fully apply its expertise. For example, the Continuing Authorities Program (CAP) is being creatively applied by Corps Districts in communities around the country – from Norfolk, Virginia to Sacramento, California – to assist with waterfront remediation and redevelopment. CAP authorities include: Section 1135 (WRDA 86); Section 206 (WRDA 99) and Section 14 of the 1946 Flood Control Act, which provides for emergency stream bank and shoreline protection to prevent damage caused by stream bank and shoreline erosion that endangers major public infrastructure or structures with some public purpose (e.g., schools, churches, hospitals). However, these authorities are limited to identification of a nexus between the remediation and/or restoration project and a water resource. In the case of brownfields, several authorities can be applied through CAP only if they are adjacent to a waterway.

The Corps' Support for Others (SFO) program is another area where the Corps has applied its expertise to assist with remediation and redevelopment. Under the SFO program, the Corps can be hired by federal, state, or local governments to provide technical or management support on the cleanup of brownfields. However, this program has also had varied success in the area of

brownfields cleanup and redevelopment, in large part because it requires that other agencies have sufficient funding to secure the Corps' services.

In sum, while there are several authorities that can enable the Corps to engage in waterfront remediation and redevelopment, there are no specific authorities for this purpose. Corps waterfront remediation and redevelopment activities occur only insofar as they also meet the specific criteria of the existing authorities. General Flowers recognized this limited ability when he spoke before the National Association of Local Government Environmental Professionals in June 2001 in stating: "we do not have any specific authorities to support brownfields projects, but the Corps has several water resources development authorities" and "in many cases brownfields sites are adjacent to waterways, and that's where the Corps can have an impact on the problem." Waterfront and related areas that require remediation and redevelopment, but do not fall into one of the existing authorities, must go unaddressed by the Corps, which is among the nation's leading agencies with the specific cleanup and engineering expertise to address these sites.

A new authority for the Corps to engage in remediation and restoration of waterfronts and related areas would allow the Corps to fully apply its well-developed cleanup, engineering and restoration expertise to contaminated, abandoned and underutilized waterfronts throughout the Great Lakes region and the nation. This new authority would complement other federal, as well as state and local, waterfront and waterfront revitalization initiatives.

To this end, the Great Lakes Commission believes this new WRDA authority should be consistent or integrated with existing "smart growth" or comprehensive planning activities at the state and local level. This will ensure that remediation and restoration activities are consistent with state and local land use and development priorities, helping reduce costly and unnecessary sprawling development. Coordination among federal and between federal, state and local remediation and redevelopment activities will also ensure a more effective public investment in waterfront revitalization.

3) SELECTED WRDA COST-SHARING MODIFICATIONS

- a) With respect to nonfederal cost sharing, the Great Lakes Commission acknowledges the basis for nonfederal cost-share provisions when it comes to navigation-related projects authorized under WRDA. This requirement ensures a commitment on the part of project beneficiaries and weeds out those projects where only a federal interest may have been identified. For example, the Commission is the nonfederal sponsor for the new lock at Sault Ste. Marie, Michigan. This project has both regional and national benefits and the Commission is coordinating the payment of a nonfederal cost share of more than \$50 million to be contributed by our member states.

However, there are instances when fine-tuning of some cost-share provisions should be considered, such as permitting in-kind contributions to meet the requirements in non-construction cases. We recommend that **for the Great Lakes recreational boating provision in Section 455 (c) of WRDA '99, in-kind contributions should be permitted to satisfy the 25 percent nonfederal cost share for the congressionally authorized study.** This change would require an amendment of Section 455 subsection (f). The Commission is working with the Corps' Detroit District in carrying out this study. The results will assist Congress in evaluating the economic benefit of recreational boating, particularly for coastal communities, thereby showing the importance of maintaining federal responsibility for shallow-draft harbor dredging.

- b) Another example where the Commission requests a technical cost-sharing change pertains to the Great Lakes Fishery and Ecosystem Restoration Program, authorized in Section 506, WRDA 2000. We ask that Congress **allow in-kind contributions for 100 percent of the nonfederal share for planning, design and construction, and eliminate the cost-sharing requirement for post-construction project monitoring and evaluation by amending subsection 506(f).**

CLOSING STATEMENT

Strong federal-state partnerships are critical to effective management of water resources in the Great Lakes region and nationally. Federal leadership is needed to make the partnership approach work and federal legislation is the starting point. Increasing demands on water resources, as well as past and present threats to water resources, require re-evaluation of existing laws and policies to ensure that we continue to meet these challenges. Allowing for the full range of beneficial uses of dredged material, providing a new authority to allow the Corps to fully apply its expertise in rehabilitating our nation's waterfronts, and modifying cost-sharing requirements are positive and necessary responses to meet today's water resource management challenges. On behalf of our eight Great Lake member states, the Great Lakes Commission urges the Water Resources and Environment Subcommittee to include these provisions in WRDA 2002.